

No. 1-09-3103

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 07 CR 17778
)	
OLLIE DAILY,)	Honorable Joreg Luis Alonso,
)	Judge Presiding.
Defendant-Appellant.)	

Quinn, P.J., delivered the judgment of the court.
Neville and Steele, JJ., concurred in the judgment.

ORDER

¶1 *HELD:* (1) Where the trial court considered all factors in aggravation and mitigation and the sentence was within the permissible statutory range, defendant's sentence was not excessive; and (2) where the day defendant was sentenced was not counted as presentence custody credit, the mittimus accurately reflected defendant's presentence credit.

¶2 After a bench trial, defendant Ollie Daily was convicted of second degree murder and sentenced to 18 years in prison. On appeal, defendant contends that her sentence was excessive and that the mittimus must be corrected to reflect the correct number of days of presentence custody credit. We affirm.

¶3 On August 29, 2007, defendant was charged with first degree murder and home invasion for the stabbing of William Faulkner. The evidence at trial established that defendant was dating the victim in August 2007. Defendant testified that she lived with the victim at 221 East 121st

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Street but that on August 3, 2007, she went to stay with a friend because she needed some space. On August 5, 2007, the victim was sleeping in the apartment's master bedroom with Carleen Clay. The victim's teenaged cousin, Christina, and her two friends were sleeping in the second bedroom. Around 6 a.m., defendant called the victim, then started knocking on the front door of the apartment. The victim did not let defendant in. Defendant did not have her keys so she pushed the window air-conditioning unit into the apartment, breaking the window, and climbed in. Defendant saw Clay in the bedroom and began yelling and fighting with the victim, who repeatedly asked defendant to leave. Defendant continued yelling and said she was going to kill the victim. According to the State's witnesses, defendant grabbed a knife three separate times during the incident: once Clay took a knife away from defendant, and once the victim got hold of a knife and handed it to Christina. When defendant grabbed the third knife she and the victim were fighting in the kitchen. Defendant testified she stabbed the victim because she feared for her life. Both Clay and Christina heard the victim shout, "[s]he stabbed me" and ran to the kitchen. The victim was bleeding from his chest and wheezing. He later died from a stab wound to the heart and multiple incised wounds.

¶4 The trial court found defendant not guilty of home invasion and guilty of second degree murder. The court denied defendant's motion for new trial.

¶5 The presentence investigation report (PSI) indicated, in pertinent part, that defendant was 27 years old at the time of sentencing and had an 11-year-old daughter. Under the "Employment" heading, the PSI read that defendant worked for the Boys and Girls Club of Chicago and had worked there since 2006.

¶6 The sentencing hearing was held on September 16, 2009. In aggravation, the State provided two victim impact statements. The State argued that because defendant could have walked away, had a prior felony conviction, and committed the murder while teenaged girls were present, the maximum prison sentence of 20 years was appropriate.

¶7 In mitigation, defendant provided proof of her employment and several letters in support of her good character. The defense argued that defendant was gainfully employed helping young people, she was a good person who had made bad choices, and that she deserved a sentence of probation.

¶8 Defendant also spoke, and told the court that she took full responsibility for her actions and that she was "forced to do what [she] had to do."

¶9 In reaching its decision, the court explained that it considered the letters defendant submitted in mitigation as well as the victim impact statements. It stated:

"I have looked at the pre-sentence investigation record, which lays out some of the circumstances of her life, her upbringing, her employment history, her educational history. *** I have considered that.

I have looked at the statute as the defense asked me to do.

I have looked at the factors in aggravation and mitigation. I am aware that the offense is probational. I am aware of the fact that that is the preferred sentence. I am aware of the financial implications of incarceration in the penitentiary.

I believe that a term in the penitentiary is the appropriate sentence, and in this particular case I believe that it is necessary to deter others from committing the same crime.

I have looked at all the factors in aggravation, but I'd point out that under case law I'm not bound only by those. And I agree with the State here that the fact that there were numerous teenage girls present - I forget how many - at 4:30 in the morning when she broke into the apartment, tore down the air conditioner to gain entry.

I believe that that is a factor in aggravation. ***

This was a situation that started with Miss Daily. She broke into the apartment.

It's an understatement that *** this could have been avoided. Clearly it was senseless. It was Miss Daily's doing."

The court sentenced defendant to 18 years in prison and gave her 772 days of presentence custody credit. Defendant's motion to reconsider her sentence was denied.

¶10 On appeal, defendant first contends that her sentence was excessive. Specifically, defendant argues that the trial court improperly relied on the fact that she "broke in" to her apartment as an aggravating factor and gave insufficient weight to mitigating factors.

¶11 The sentence imposed by a trial court is entitled to great deference because the trial court is in the best position to analyze the defendant's credibility, demeanor, general moral character, mentality, social environments, habits, age, and potential for rehabilitation. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000); *People v. Lampley*, 405 Ill. App. 3d 1, 11 (2010). The court must also consider the circumstances of the crime when imposing a sentence. *Lampley*, 405 Ill. App. 3d at 11. A sentence within the statutory limits will be considered excessive only upon a showing that the trial court abused its discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007); *Stacey*, 193 Ill. 2d at 210. The court is presumed to have considered any mitigating factors absent a showing to the contrary. *Lampley*, 405 Ill. App. 3d at 13.

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¶12 In this case, defendant was sentenced within the permissible statutory range for second degree murder of 4 to 20 years. 730 ILCS 5/5-8-1(a)(1.5) (West 2006) (sentencing range for second degree murder). The record shows that at sentencing, the court said it considered defendant's letters, the victim impact statements, and the presentence investigation report, which covered the "circumstances of [defendant's] life, her upbringing, her employment history, her educational history." Additionally, the court specifically stated that it considered both the aggravating and mitigating factors. Under these circumstances, we find that defendant's 18-year sentence was appropriate.

¶13 Defendant argues that the trial court improperly considered her act of "breaking in" to her apartment as an aggravating factor after having found her not guilty of home invasion. She maintains that the court cannot base her sentence on the belief that she was responsible for an offense of which she was acquitted. See *People v. Shumate*, 94 Ill. App. 3d 478, 487-88 (1981). We believe the context of the court's statement about defendant "breaking in" demonstrates that it was properly considering the circumstances of the crime and the manner of her entry as factors in aggravation. The court said:

"[S]he broke into the apartment, tore down the air conditioner to gain entry.

I believe that that is a factor in aggravation. ***

This was a situation that started with Miss Daily. She broke into the apartment.

It's an understatement that *** this could have been avoided. Clearly it was senseless. It was Miss Daily's doing."

Contrary to defendant's interpretation, these remarks by the sentencing court do not demonstrate its belief that defendant's entry was illegal, as evidenced by the acquittal for home invasion, but, rather, her entry was violent and forceful, as established by tearing out an air conditioner and

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climbing through a window. The court appropriately referenced and considered the circumstances of the crime and the violent and deliberate manner in which it began. See *Lampley*, 405 Ill. App. 3d at 11; see also *People v. Taylor*, 139 Ill. App. 3d 779, 783 (1985) (where the defendant was found guilty of voluntary manslaughter but not murder, the trial court did not abuse its discretion during sentencing when it considered that the defendant could have walked away and instead deliberately shot at the victim). Here, the trial court did not abuse its discretion.

¶14 Next, defendant asserts in her appellate brief that she is entitled to one additional day of presentence custody credit pursuant to section 5-8-7(b) of the Unified Code of Corrections (730 ILCS 5/5-8-7(b) (West 2006)), because the day of sentencing should have been counted as presentence credit. However, subsequent to defendant submitting her brief, and as defendant acknowledges in her reply brief, the Illinois Supreme Court held that the date of sentencing is not included in calculating presentence custody credit. *People v. Williams*, 239 Ill. 2d 503, 510 (2011). Therefore, defendant correctly concedes that the mittimus accurately reflects 772 days of presentence credit.

¶15 For the foregoing reasons, we affirm the judgment of the trial court.

¶16 Affirmed.